

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

ORIGINAL  
FILE

In re Petition of )  
 )  
COMMUNICATIONS SATELLITE )  
CORPORATION )  
 )  
For Repeal of Section 25.131(j)(1) of )  
the Commission's Rules and, in the )  
Interim, for Waiver of that Section )  
as it Applies to Services Provided )  
Via the Intelsat K Satellite )

RM-7931

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Federal Communications Commission  
Office of the Secretary

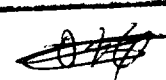
**PARTIAL OPPOSITION OF PAN AMERICAN SATELLITE**

On February 20, 1992, Comsat filed the above-captioned petition (the "Petition") requesting that the Commission repeal Section 25.131(j) of the Commission's Rules and grant Comsat an interim waiver of Section 25.131(j). The Commission decided to treat Comsat's request for repeal as a petition for rulemaking, and released a Public Notice soliciting comments.<sup>1</sup> Report No. 1882 (March 20, 1992).

Pan American Satellite ("PAS"), by its attorneys, hereby opposes in part Comsat's request for repeal of Section 25.131(j). PAS generally supports Comsat's call for repeal of Section 25.131(j). As discussed below, however, receive-only earth stations (other than Intelnet I earth stations) that communicate with Intelsat satellites raise special concerns, which should be considered only in a more comprehensive proceeding.

Even if the Commission were to reject PAS' suggestion for a separate proceeding, Section 25.131(j) should continue to apply to receive-only earth stations (other than Intelnet I earth stations) that communicate with Intelsat satellites, because the Communications Satellite Act of 1962, as amended (the "Satellite Act") so requires. Accordingly, the Commission should grant Comsat's Petition in part by

<sup>1</sup> The waiver portion of the Petition was the subject of a separate Public Notice, and PAS has opposed Comsat's waiver request.

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repealing those portions of Section 25.131(j) that do not relate to reception of signals from Intelsat satellites.

**I. With One Important Exception, Comsat's Request Should Be Granted.**

Section 25.131(j) states that international receive-only earth stations may not be operated without a license. Section 25.131(j) identifies three categories of space stations whose transmissions may not be received without a license: "(1) Intelsat space stations; (2) International space stations; [and] . . . (3) U.S. domestic and non-U.S. space stations [used] for reception of services from other countries."<sup>2</sup>

PAS supports Comsat's request for repeal of Section 25.131(j) as it applies to the latter two categories of space stations. The elimination of the licensing requirement for domestic receive-only earth stations has been an unqualified success, and extending that elimination to the international arena would, as a general matter, be beneficial. As discussed below, however, there are special statutory and other considerations that preclude granting the portion of Comsat's request relating to the licensing of receive-only earth stations that communicate with Intelsat satellites.

**II. Section 25.131(j) Should Continue To Apply To Receive-Only Earth Stations That Communicate With Intelsat Satellites.**

There are a number of pending and recently-concluded proceedings that concern Comsat's basic nature. Comsat's Petition adds to this growing list, and all of these issues should be considered in the context of a comprehensive proceeding.

Comsat has requested permission to use "price caps" for its switched voice services. See RM No. 7913. Comsat has also requested authority to operate a broad array of maritime services -- which Comsat characterizes as "value added" services -- without observing structural separation requirements. See File No. ISP-92-001. Comsat already is providing SeaMail service to its customers on a non-separated basis; has been granted special temporary authority to provide maritime cellular resale on a non-separated basis; and has requested permanent authority to replace its maritime cellular temporary authority. See TAO-1806 (Mar. 26, 1991); File No. ISP-91-004.

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<sup>2</sup> Section 25.131(j) provides for an exception to this licensing requirement for Intelsat I earth stations. See Section III, infra.

In addition, Brightstar Communications, Ltd., with Comsat's support, has requested a declaratory ruling to the effect that private carriers may operate earth stations communicating with Intelsat satellites, even if such earth stations transmit the messages of third parties. See ISP-92-002. And Comsat's tariff transmittals increasingly are characterized by departures from traditional common carrier ratemaking procedures, based on invocation of perceived or actual competition from separate systems and undersea cables.

Many of these matters have received minimal Commission scrutiny. Comsat's departures from structural separation requirements, for example, have in past instances been the subject of nothing more than a letter from Comsat notifying the Commission of Comsat's plans. Similarly, Comsat's tariff transmittals are routinely permitted to go into effect absent a tariff challenge.

The cumulative impact of these changes is altering the basic manner in which Comsat operates and is regulated. Because change has been permitted to occur incrementally, however, there has been no overall evaluation of whether present and proposed changes, as a whole, are contrary to the public interest. The time has come to put a halt to these piecemeal actions, which are inconsistent with the Commission's comprehensive approach in the Comsat Study and the Comsat Structure proceedings. Accordingly, the portion of Comsat's Petition pertaining to receive-only earth stations communicating with Intelsat satellites should only be considered in a Comsat proceeding of broader applicability.

### **III. The Satellite Act Precludes Granting The Intelsat-Related Portion Of Comsat's Request.**

The Satellite Act requires that the Commission license earth stations that are classified as "satellite terminal stations." This requirement is set forth in Section 201(c)(7) of the Act, which states that the Commission must "grant appropriate authorizations for the construction and operation of each satellite terminal station." 47 U.S.C. § 721(c)(7). Section 201(c)(7) further states that licenses for satellite terminal stations may be issued only to Comsat or "one or more authorized carriers."

The term "satellite terminal station" is defined in Section 103(2) of the Satellite Act. 47 U.S.C. § 702(2). There are two components to the definition. First, in order to be a satellite terminal station, an earth station must consist of "a complex of communication equipment located on the earth's surface, operationally connected with one or more terrestrial communications systems." Id. Second, in order to be a satellite terminal station, an earth station either must be "capable of

transmitting telecommunications to" Intelsat satellites, or it must be "capable of . . . receiving telecommunications from" Intelsat satellites. Id.

These provisions reflect Congress' intent that one must have a license in order to operate a receive-only satellite terminal station. If Congress had intended to limit the licensing requirement for satellite terminal stations to earth stations that transmit and earth stations that transmit and receive, then the final portion of the definition of satellite terminal stations (i.e., the portion of the definition dealing with earth stations that are capable of receiving telecommunications from Intelsat satellites) would be superfluous. Principles of statutory construction require that meaning be given, if possible, to every word used by Congress. See, e.g., Reiter v. Sonotone Corp., 442 U.S. 330, 339 (1979). Consistent with these principles, Sections 201(c)(7) and 103(2) must be construed as requiring licenses for receive-only satellite terminal stations. Comsat itself previously argued that these sections should be so construed. See Deregulation of Receive-Only Satellite Earth Stations ("Equatorial"), FCC 86-214 ¶ 7 (May 19, 1986).

If Sections 201(c)(7) and 103(2) require licenses for receive-only satellite terminal stations, then Comsat's Petition must be denied in part. Comsat has requested that the licensing requirement be eliminated for all international receive-only earth stations, including satellite terminal stations, and to that extent has requested relief that is inconsistent with the Satellite Act.

Comsat asserts that, in the Equatorial ruling, the Commission already has addressed the applicability of the Satellite Act to the licensing of international earth stations. Petition at 4. Comsat's reliance on Equatorial, however, is misplaced. In Equatorial, the Commission held that licenses would no longer be required for receive-only earth stations providing Intelnet I service. The Commission's decision was based on its finding that Intelnet I receive-only earth stations -- because of the special characteristics of the Intelnet service -- are not satellite terminal stations as defined by Section 201(c)(7) of the Satellite Act.<sup>3</sup> This narrow decision, confined by its terms to non-satellite terminal stations, does not support Comsat's request for elimination of the licensing requirement for all international receive-only earth stations, including receive-only satellite terminal stations.

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<sup>3</sup> If an earth station is not a satellite terminal station, then Section 201(c)(7) does not require that the earth station be licensed to Comsat or an authorized common carrier. See TRT Telecommunications Corp. v. FCC, 876 F.2d 134 (D.C. Cir. 1989).

In the Equatorial proceeding, moreover, Comsat expressly recognized the distinction between Intelnet earth stations and non-Intelnet earth stations that communicate with Intelsat satellites. Comsat supported elimination of the licensing requirement for the former, and opposed elimination for the latter as "contrary to the provisions of Section 201(c)(7) of the Satellite Act." Id. at ¶ 7. Comsat also asserted that delicensing for the latter "may be inconsistent with the Intelsat Agreement . . . or with Intelsat charging policies." Id. at ¶ 6 n.9.


Wholly apart from any statutory issues, therefore, Comsat should be required to address whether the Intelsat Agreement and Intelsat charging policies are inconsistent with the relief Comsat has requested. And in any event, the Satellite Act, as interpreted by Comsat itself in the Equatorial proceeding, precludes granting the Intelsat-related portion of Comsat's Petition.

\* \* \*

For the reasons stated herein, the Commission should repeal Section 25.131(j), with the exception of the portions of Section 25.131(j) requiring licenses for receive-only earth stations (other than Intelnet I earth stations) that communicate with Intelsat satellites.

Respectfully submitted,

PAN AMERICAN SATELLITE

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April 20, 1992

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Partial Opposition of Pan American Satellite was sent by first-class mail, postage prepaid, this 20th day of April, 1992, to each of the following:

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